

REMARKS

Claims 1-32 are pending in the Application.

Claims 1-32 stand rejected.

I. OBJECTION TO THE TITLE

The Examiner states that the title should be changed to provide a complete and detailed description of the invention. The Applicant notes that the claims are directed to methods and apparatus for servicing a network request, which comports with the title. Thus, the Applicant respectfully submits that the title is indicative of the invention to which the claims are directed. MPEP § 606.01. The Applicant further notes that the aforesaid provisions of the MPEP do not require that the title be a complete and detailed description of the invention. Nevertheless, the Applicant is receptive to any suggestion which the Examiner may consider more descriptive of the claimed invention.

II. OBJECTION TO THE DRAWINGS

The drawings have been objected to because of informalities noted on form PTO-948. New formal drawings have been submitted herewith as a separate paper.

III. REJECTION UNDER 35 U.S.C. § 102

Claims 1-3, 10-12, 19-21 and 28-31 have been rejected under 35 U.S.C. § 102 as being anticipated by *Berstis, et al.*, U.S. Patent No. 6,115,745 ("*Berstis*"). The Applicant respectfully traverses the rejection of claims 1-3, 10-12, 19-21 and 28-31 under 35 U.S.C. § 102.

Considering claim 1, claim 1 is directed to a method of servicing a network request. The method includes determining availability of resource capacity in response to the network request, and allocating a scheduled time for resending the network request by a client initiating the request. *Berstis* is said to teach the step of determining availability of resources, and allocating a scheduled

time to process a data transfer request. (Paper No. 3, pages 2-3) (citing *Berstis* at column 5, lines 30-40 and column 6, lines 17-20). The disclosure referred to by the Examiner is directed to an agent scheduling function that is implemented on a network client. (*Berstis*, column 5, lines 23-40.) Thus, the teaching in *Berstis* would not be understood by one of ordinary skill in the art to disclose determining availability of resource capacity in response to a network request. A network client does not service its own request. Additionally, the Applicant notes that the limitation in claim 1 with respect to the response to a network request is not addressed in the rejection of claim 1. (Paper No. 3, page 3.) With respect to the step of allocating a scheduled time for resending... , the Examiner contends, as noted above, that *Berstis* teaches allocating a scheduled time to process a data transfer request. Thus, by its plain terms, the alleged teaching in *Berstis* does not address the limitation of claim 1. Claim 1 does not recite allocating a time to process a data transfer request. Neither would *Berstis* be expected to teach the step of allocating as recited in claim 1, because the disclosure in *Berstis* is directed to an agent implemented as a network client. The client does not send requests to itself, consequently, *Berstis* would not be expected to be responsive to a network request. Additionally, *Berstis* discloses that if a given client machine is not able to obtain one of a limited number of telephone connections, a map of available agent start times, which is maintained by the agent, is regenerated. Thus, the disclosure in *Berstis* cannot teach the steps of claim 1 because no request could have been initiated.

Anticipation requires that a single prior art reference teach the identical invention as recited in the claims. MPEP § 2131. All the claim limitations must be taught and arranged as required by the claim. *Id.* Because, for at least the reasons discussed hereinabove, *Berstis* has not been demonstrated to teach the identical invention of claim 1, claim 1 is allowable under 35 U.S.C. § 102 over *Berstis*. Additionally, claims 10 and 19 have been rejected on the same basis as claim 1. (Paper No. 3, page 2.) The Applicant understands that these claims have been rejected as being directed to a data processing system and computer program product respectively including circuitry and programming instructions for performing operations paralleling the method steps of claim 1. Thus

the Applicant respectfully asserts that claims 10 and 19 are likewise allowable under 35 U.S.C. § 102 over *Berstis*.

Claim 2 depends from claim 1 and recites the method thereof in which the step of allocating a scheduled time includes selecting the scheduled time, and notifying the client to resend the network request at the scheduled time. Claim 2 has been rejected on the assertion that *Berstis* teaches selecting a notification of a time slot. (Paper No. 3, page 3) (citing *Berstis*, column 5, line 40 and lines 50-52. The teaching in *Berstis* referred to discloses a map or agent load table, and if the outcome of a test to determine whether the agent is able to obtain one of the limited number of network connections, to initiate agent activity. (*Berstis*, column 4, line 40 and lines 47-52). Thus, by their plain terms, the teachings relied upon do not disclose selecting a notification of a time slot. Furthermore, claim 2 recites the limitation of notifying the client to resend the network request. As noted hereinabove, *Berstis* is directed to an agent running on a client machine. Thus, *Berstis* would not be expected to teach a step of notifying the client to resend the network request at the scheduled time because there is no logical reason for the agent to send a notification to itself. Thus, for at least the aforesaid reasons, the Applicant respectfully contends that *Berstis* does not teach the identical invention of claim 2. Therefore, claim 2 is allowable under 35 U.S.C. § 102 over *Berstis*. Claims 11 and 20 have been rejected on the same basis as claim 2. (Paper No. 3, page 3.) The Applicant understands that these claims have been rejected as being directed to a data processing system and computer program product respectively including circuitry and programming instructions for performing operations paralleling the method steps of claim 2. Thus the Applicant respectfully asserts that claims 11 and 20 are also allowable under 35 U.S.C. § 102 over *Berstis* for at least the reasons discussed in conjunction with claim 2.

Claim 3 further depends from claim 2 and recites the method thereof in which the step of selecting the scheduled time includes the step of selecting the scheduled time from a preselected plurality of time slots. Claim 3 has been rejected on the identical basis as claim 1. (Paper No. 3, page 2.) However, no teaching has been identified in rejecting claim 1 that allegedly discloses the step of selecting the scheduled time from a preselected plurality of time slots. Furthermore, claim 3

depends from an allowable base claim, or an intervening claim which itself depends from an allowable base claim. Consequently, claim 3 is necessarily allowable as well. For at least these reasons, the Applicant respectfully asserts that *Berstis* does not teach the identical invention of claim 3, and claim 3 is allowable under 35 U.S.C. § 102 over *Berstis*. With respect to claims 12 and 21, the Applicant understands that these claims have been rejected as being drawn to a data processing system, and computer program product respectively including circuits and programming instructions for performing operations paralleling the steps of claim 3. (See Paper No. 3, page 2.) Accordingly, the Applicant respectfully contends that claims 12 and 21 are also allowable under 35 U.S.C. § 102 over *Berstis*.

Claim 28 is directed to a data processing system. The system includes a network, a client coupled to a network, and a server coupled to the network, the client including circuitry operable for sending a request for delivery of software assets over the network to the server. The server includes circuitry operable for scheduling the request for delayed servicing in response to insufficient system capacity, and, the server also includes circuitry for sending a notification to the client to resend the request according to the scheduling. Claim 28 has been rejected on the identical ground as claim 1. (Paper No. 3, page 2.) As discussed hereinabove, the disclosure in *Berstis* is directed to an agent scheduling function running a network client. The limitation in claim 28 directed to a server coupled to a network including circuitry operable for scheduling the request for delayed servicing... has not been expressly addressed. Furthermore, the teaching in *Berstis* directed to a client agent does not teach the client including circuitry for sending a request for delivery of software assets, nor by its plain terms, the server as recited therein. Because, *Berstis* has not been shown to teach the identical invention of claim 28, the Applicant respectfully asserts that claim 28 is allowable under 35 U.S.C. § 102 over *Berstis*.

Claim 29 depends from claim 28 and recites the data processing system thereof in which the request is scheduled for servicing at a preselected time. Because *Berstis* does not disclose a server including circuitry operable for scheduling the request for delayed servicing, and necessarily fails

to disclose that the request is scheduled for servicing at a preselected time. For at least this reason, the Applicant also respectfully asserts that claim 29 is allowable under 35 U.S.C. § 102 over *Berstis*.

Claim 30 is directed to the data processing system of claim 28 in which the client further includes circuitry operable for resetting the request in response to the notification. As discussed hereinabove, *Berstis* teaches that the agent start times are regenerated if a connection is unavailable.

Since a connection is unavailable, no requests could have been initiated in the first instance.

Therefore, the agent, as disclosed in *Berstis* would not be expected to be operable for resending a request in response to a notification. Furthermore, also discussed hereinabove, no teaching in *Berstis* has been identified that discloses a server sending a notification to a client for resending the request.

Because, for at least these reasons, *Berstis* has not been shown to teach the identical invention of claim 30, claim 30 is allowable under 35 U.S.C. § 102 over *Berstis*.

III. REJECTION UNDER 35 U.S.C. § 103

Claims 4-9, 13-18, 23-27 and 32 have been rejected 35 U.S.C. § 102 as being unpatentable over *Berstis* in view of *Guarneri, et al.*, U.S. Patent No. 5,631,907 ("*Guarneri*"). The Applicant respectfully traverses the rejection of claims 4-9, 13-18, 23-27 and 32 under 35 U.S.C. § 103.

Claim 4 depends from claim 1 and further includes the steps of breaking a file in said network request into a set of subfiles, in which the network request scheduled for resending comprises a request to send a preselected subfile of the set of subfiles. For at least the reasons discussed hereinabove in conjunction with claim 1, the Applicant respectfully submits that *Berstis* fails to teach the limitations of claim 1 incorporated by reference into claim 4. It is admitted that *Berstis* fails to teach breaking up data into subfiles and the data is specifically software. (Paper No. 3, page 4.) As an initial matter, claim 4 is not directed to a step of breaking up data into subfiles, without more. Thus, the teaching admittedly missing in *Berstis* does not address all of the limitations of claim 4.

Thus, the reliance on *Guarneri* as teaching the limitations admittedly missing in *Berstis* does not support a *prima facie* showing of obviousness. *Guarneri* allegedly teaches transmitting software over a network divided into subfiles or blocks. However, *Guarneri* has not been demonstrated to teach breaking a requested file in a network request into a set of subfiles, in which the network request scheduled for resending comprises a request to send a preselected subfile at the set of subfiles. These express limitations of claim 4 have not been addressed at all in the rejection of the claim. (See Paper No. 3, page 4.) A *prima facie* showing of obviousness requires, among others, that the prior art references alone or in combination teach or suggest all of the limitations of the claim. MPEP § 2142. Furthermore, in making such a determination, all words in the claim must be considered. MPEP § 2143.03. Because *Berstis* and *Guarneri*, alone or in combination, have not been shown to teach or suggest all of the limitations of claim 4, claim 4 is allowable under 35 U.S.C. § 103 over *Berstis* and *Guarneri*.

Additionally, *prima facie* obviousness requires that there be some motivation or suggestion for combining the references to make the claimed invention. MPEP § 2143.01. The suggestion or motivation must be found in the references themselves, the knowledge of persons of ordinary skill in the art or in the nature of the problem to be solved. *Id.* The Examiner contends that it would have been obvious to one of ordinary skill in the art to incorporate the subfiles of *Guarneri* into the network scheduling system of *Berstis* because *Berstis* operates with transferring data and *Guarneri* suggests that optimization can be obtained with subfiles. However, as previously discussed, the scheduling system in *Berstis* is directed to a client agent, and as noted hereinabove, does not operate in response to requests. Therefore, any modification of *Berstis* to make the invention of claim 4 changes the principle of operation thereof. There can be no suggestion or motivation to combine or modify references where the suggested modification changes the principle of operation of the reference being modified. MPEP § 2143.01. Thus, for at least this reason as well, a *prima facie* showing of obviousness has not been made with respect to claim 4.

Claims 13 and 22 have been rejected on the same basis as claim 4. (Paper No. 3, page 3.) Claims 13 and 22 are respectively directed to a data processing system and a computer program

product including, correspondingly, circuits and programming instructions for performing operations paralleling the method step of claim 4. For the same reasons as discussed in conjunction with claim 4, the Applicant also respectfully asserts that claims 13 and 22 are allowable under 35 U.S.C. § 103 over *Berstis* and *Guarneri*.

Claim 5 is directed to the method of claim 1 and further including the step of servicing the request in real time when resource capacity is available. *Berstis* allegedly teaches real time services. (Paper No. 3, page 4) (citing *Berstis*, column 1, lines 45-48). The teaching in *Berstis* relied upon discloses web agents that dial in when ever they want and use phone connections for as long as they want. (*Berstis*, column 45-46.) *Berstis* further teaches that web agents without centralized control tend to use network resources in a greedy fashion. (*Berstis*, column 47-49.) Thus, there is nothing identified in *Berstis* directed to servicing a request in real time when network capacity is available. For at least this reason and those discussed in conjunction with claim 1, the Applicant respectfully asserts that *Berstis* has not been shown to teach or suggest the limitations of claim 5. Consequently, claim 5 is allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* and *Guarneri*. Claims 14 and 23 have been rejected on the same basis as claim 5. (Paper No. 3, page 4.) Claims 14 and 23 are directed to systems and program products including circuitry and program instructions, respectively, for performing operations paralleling the method step of claim 5. For at least the reasons discussed in conjunction with claim 5, the Applicant also respectfully contends that claims 14 and 23 are allowable under 35 U.S.C. § 103 over the cited art.

Claim 6 depends from claim 2 and recites the method thereof in which each time slot includes a first portion having a first preselected proportion of a predetermined network resource capacity, the first portion comprising a portion reserved for servicing requests in real time. *Berstis* allegedly teaches the limitation of claim 6 in disclosing time slot division as multiple tasks. By the plain terms of the rejection, *Berstis* does not purport to teach or suggest all of the limitations of claim 6. Claim 6 does not refer to "time slot division"; the Applicant is unsure as to what time slot division means. Nevertheless, the Examiner provides no rationale explaining how multiple tasks teach time slots including a first portion having a preselected proportion of a predetermined network

resource capacity... , as recited in claim 6. Indeed the teaching relied upon by the Examiner as disclosing the limitation of claim 6 states that the term "agent" should be broadly construed as any application running on a client machine that performs some tasks on behalf of a user of the machine. (*Berstis*, column 13, lines 53-57.) Consequently, neither *Berstis* nor *Berstis* in combination with *Guarneri* have been shown to teach or suggest all of the limitations of claim 6. For at least this reason, claim 6 is allowable under 35 U.S.C. § 103 over *Berstis* and *Guarneri*. See MPEP § 2143.01. Additionally, claims 15 and 24, directed to a data processing system and computer program product including, respectively, circuitry and programming instructions for performing operations paralleling the method steps of claim 6 are also allowable under 35 U.S.C. § 103 over *Berstis* and *Guarneri*.

Claim 7 is directed to the method of claim 2 in which each time slot includes a first portion having a first preselected proportion of a predetermined network resource capacity, the first portion comprising a portion reserved for servicing at least one scheduled request. Claim 7 has been rejected on the identical basis as claim 6. (Paper No. 3, page 4.) For at least the same reasons as discussed in conjunction with claim 6, the Applicant respectfully contends that claim 7 is also allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* and *Guarneri* in combination. Likewise, claims 16 and 25 directed to a data processing system and computer program product respectively including circuitry and programming instructions for performing operations paralleling the limitation of claim 7 are also allowable under 35 U.S.C. § 103.

Claim 8 depends from claim 6 and recites the method thereof in which the first portion includes a second portion reserved for servicing requests having a first priority. The limitation of claim 8 is purportedly taught by *Berstis* as teaching slot priority as weights. (Paper No. 3, page 4.) The teaching relied upon discloses an agent loading map which is a table of weighted start times for each of the web agents. (*Berstis*, column 8, lines 64-66.) Thus, by the plain terms of the teaching, *Berstis* does not therein disclose a first portion of a time slot including a second portion for servicing requests having a first priority. The Examiner provides no rationale explaining why one of ordinary skill in the art would understand a table of weighted start times of a web agent to be a priority for

servicing requests, and in particular, a portion of a time slot reserved for servicing requests having a first priority. Because, at least, *Berstis* has not been shown to teach or suggest all of the limitations of claim 8, claim 8 is allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* in combination with *Guarneri*. See MPEP § 2143.03. Likewise, claims 17 and 26 directed to a data processing system and computer program product respectively including circuitry and programming instructions for performing operations paralleling the method steps of claim 8 are also allowable under 35 U.S.C. § 103 over the cited art.

Claim 9 depends from claim 7 and recites the method thereof in which the first portion includes a second portion reserved for servicing requests having a first priority. Claim 9 has been rejected on the identical basis as claim 8. (Paper No. 3, page 4.) For at least the same reasons as discussed in conjunction with claim 8, the Applicant also respectfully contends that claim 9 is allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* and *Guarneri* in combination. Additionally, claims 18 and 27 directed a data processing system and computer program product respectively including circuitry and programming instructions for performing operations paralleling the method steps of claim 9 are also allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* and *Guarneri* combined.

With respect to claim 32, claim 32 is directed to the data processing system of claim 28 in which the server further includes circuitry operable for breaking the software asset into a plurality of subfiles in which the request for resending comprises a request for a preselected subfile of the plurality. Claim 32 has been rejected on the same basis as claim 4. (Paper No. 3, page 3.) As discussed in conjunction with claim 4, the basis of rejection does not address the limitations in claim 28 directed to the request for resending comprising a request for a preselected subfile of the plurality. Thus, for at least the reason that the references, alone or in combination, have not been shown to teach or suggest all of the limitations of claim 28, claim 28 is allowable under 35 U.S.C. § 103 over *Berstis* or *Berstis* and *Guarneri* in combination. See MPEP § 2143.03.

VII. CONCLUSION

As a result of the foregoing, it is asserted by the Applicants that the remaining claims in the Application are in condition for allowance, and respectfully request an early allowance of such claims.

Applicant respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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